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Reasons for Decision

Syndicat des travailleuses et travailleurs de
Transco-CSN,

applicant,

and

Transport St-Léonard Inc.;
Les Autobus Transco (1988) Inc.,

employers.

Board File: 29475-C
Neutral Citation: 2012 CIRB 660
October 17, 2012

The Canada Industrial Relations Board (the Board) was composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and Robert Monette, Members.

Parties' Representatives of Record

Mr. Daniel Charest, for the Syndicat des travailleuses et travailleurs de Transco-CSN;
Mr. Guy Sirois, for Transport St-Léonard Inc.;
Mr. Ronald J. McRobie and Ms. Valérie Potvin, for Les Autobus Transco (1988) Inc.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I–Nature of the Application

[1] This matter concerns an application filed by the Syndicat des travailleuses et travailleurs de Transco–CSN (the union) pursuant to section 18 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*). The union is seeking a declaration that the (approximately) 150 drivers formerly employed by Transport St-Léonard (TSL) in Anjou, a non-unionized company acquired by Transco in December 2011, are covered by the Board’s certification order no. 8665-U issued in favour of the union on December 3, 2004. That bargaining unit currently comprises about 350 Transco drivers. The unit description reads as follows:

all drivers employed by Les Autobus Transco (1988) Inc., **excluding** office and garage employees, located at: 101 Réverchon Street, Dorval; 7975 blvd Henri-Bourassa East, Montréal; 8201 Elmslie Street, LaSalle. (Order no. 8665-U)

(emphasis added)

[2] The union did not submit any evidence of union membership with regard to the employees affected by the application.

[3] Transco’s core operation is school bus transportation but it also provides transportation to different locations for purposes of special outings and extra-curricular activities for the students attending schools in the school boards it serves or for other groups. The Board has previously recognized Transco as a federally regulated undertaking.

[4] It should also be noted that a second, more recent, certification order is held by a CSN-affiliated union and covers only those employees working at Transco’s Saint-Hubert facility (order no. 9749-U). The bargaining unit description reads as follows:

all drivers who are employees within the meaning of the *Canada Labour Code* working for Les Autobus Transco (1988) Inc., **excluding** office and garage employees at its facility located at 3530 Richelieu Street, St-Hubert.

II—Request to Intervene

[5] The Board has received a request to intervene in the instant matter from the Syndicat des employés de Transport St-Léonard (Anjou), which filed an application for certification (file no. 29589-C) with the Board on August 22, 2012, after the application being considered herein was filed. In the application for certification, it was seeking certification to represent all drivers and mechanics working for Transport St-Léonard Inc. (TSL), that is, the same drivers affected by the application in the instant matter, plus mechanics.

[6] In view of the Board's finding herein, there is no need to address the request to intervene.

III—Positions of the Parties

A—The Union

[7] The union states that the operations of the employer's fourth division, the Saint-Hubert division, are carried out autonomously and independently from the other three divisions for which it is certified. It argues, however, that the employer acquired TSL in December 2011 and that the company's buses have since been sporting Transco colours and that the IT systems have since been merged.

[8] The union submits that, under article 11.5 of the collective agreement between it and the employer, drivers such as the TSL drivers are to be included in its bargaining unit. That article of the collective agreement provides that, pursuant to section 44 of the *Code*, if a merger of employers occurs or if an employer acquires by way of purchases the operation rights of another employer or company, all employees affected by said transaction will be dovetailed, taking into account their respective qualifications and seniority. Should the new employer created by the merger or the purchaser not require all of the employees after the merger, lay-offs will commence based on the new seniority list.

[9] The union further submits that the former TSL drivers and the 350 Transco drivers perform the same duties, work for the same employer, are dispatched by the same dispatchers, drive vehicles that can be used by all of the drivers, and are replaced by non-permanent or casual employees in the event of an absence.

[10] The union submits that the acquisition of TSL by Transco was a natural accretion process and that the TSL drivers fall within the intended scope of the certification order it holds.

[11] The union is consequently asking that the Board declare that all drivers previously employed by TSL are covered by certification order no. 8665-U and by the applicable collective agreement and that the Board update the certification order accordingly by adding the Anjou facility.

[12] The union asked that a hearing be held, but did not file a reply to the employer's response.

B-The Employer

[13] The employer is asking the Board to dismiss the union's application on the ground that the five divisions of Transco (Pointe-Claire-Dorval, Montréal-Nord, LaSalle, Saint-Hubert and Anjou) are all part of one major company, First Student America, and that despite standardized methods, procedures and systems, the different divisions, especially the Saint-Hubert and Anjou divisions, continue to be operated separately and independently.

[14] The employer adds that the drivers at the fourth division, that is, the Saint-Hubert division, are covered by a separate certification order (no. 9749-U), are represented by a CSN-affiliated union and are governed by a different collective agreement from that in question in the instant matter. It adds that the union in fact admitted in its submissions that the Saint-Hubert division is separate from the other divisions. In its view, the same should hold true of the Anjou division.

[15] In regard to the Anjou division, the facility concerned by the instant matter, the employer submits that the operations of that facility are engaged in autonomously and independently of the operations of the other divisions indicated above. The employer indicates that the Anjou division,

acquired in December 2011, was known as Transport St-Léonard Inc. at the time of the purchase and that it acquired the undertaking's core assets, that is, 152 school buses, transportation contracts, licences and goodwill.

[16] In the view of the employer, the acquisition of TSL cannot be deemed natural accretion or expansion of its undertaking. Rather, it was more the acquisition of a complete, autonomous and independent undertaking. It submits that the geographical area served by the undertaking is different from that served by the other divisions and the buses acquired as part of the transaction are those used by the former TSL drivers, who continue to cover the same school runs. The employer states that the facility in Anjou also has its own dispatchers, inspectors, foremen, and parts and mechanical staff, and that the employees who work there handle only transportation and fleet maintenance operations for the clients served by that division.

[17] The employer adds that the 150 drivers affected by the application in the instant matter are not unionized and therefore continue to apply the procedures and directives of the former employer, TSL, which shows that the employees and school bus transportation contracts have not been integrated, nor has any other form of integration with the employees of the other four divisions taken place.

[18] The employer alleges that the union's application broadens the intended scope of the bargaining unit for which the union is certified and is really a new application for certification and a veiled attempt to unionize a group of employees without providing any evidence of those employees' wishes. The employer submits that, contrary to what the union has alleged, article 11.5 of the collective agreement is not applicable in this matter since, in its view, the article in question applies to a completely different situation, that is, a situation where Transco would be acquired by or merged with another undertaking.

[19] The employer is asking the Board to dismiss the union's application.

IV–Analysis and Decision

A–Request for an Oral Hearing

[20] Although the union requested that an oral hearing be held, the Board is satisfied that the information before it is sufficient for it to decide the matter without one. Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. There is no requirement for the Board to give notice to the parties of its intention not to hold a hearing (see *NAV CANADA*, 2000 CIRB 468, affirmed in *NAV Canada v. International Brotherhood of Electrical Workers*, 2001 FCA 30).

B–Union’s Application

[21] In this matter, the union is asking that some 150 drivers be included in the bargaining unit for which it received certification in certification order no. 8665-U, a bargaining unit currently comprising some 350 employees.

[22] The Board wishes to begin by pointing out that, although the union cites article 11.5 of the collective agreement between it and Transco, what is involved in this matter is not an application for a declaration of sale of business pursuant to section 44 of the *Code* or an application for a single employer declaration pursuant to section 35 of the *Code*. Rather, what is involved is the acquisition by Transco of a non-unionized undertaking, which explains why the transaction cannot be considered a sale of business under section 44 of the *Code*, since there were no bargaining rights connected with TSL at the time of sale.

[23] In view of the circumstances, the Board must ask itself whether the application to include the new employees in the bargaining unit pursuant to section 18 of the *Code* alters the intended scope of certification order no. 8665-U issued in favour of the union. In *TELUS Communications Inc.*, 2004 CIRB 278, which was affirmed by the Federal Court of Appeal, a majority of the Board detailed the distinctions between an application pursuant to section 18 of the *Code*, which does not alter the intended scope of a certification order, and an application that does in fact alter such scope:

[306] Section 18 applies to a review not affecting the structure of a previously issued certificate such as the case where new employees or previously excluded employees are added to an existing bargaining unit or what can be described as additions within the intended scope of the certification order.

[307] Section 18 can find application where a union already represents a group of employees and either seeks to clarify or expand the scope of the existing bargaining unit(s). When this review includes the clarification of whether certain employees are part or not of an existing bargaining unit, the Board may use its review power to add employees to a bargaining unit without going through the normal certification procedure. ...

[308] The Board draws a distinction between section 18 applications where the additions are in fact covered by the intended scope of the original certificate and those where these additions are considered to depart radically from the existing unit. The former are considered more or less like applications for interpretation, while the latter are equated to independent applications for certification governed by rules applicable to certification, one of which is the requirement of majority union support in the group sought for addition (i.e. certification) (*CanWest Pacific Television Inc. (CKVU)* (1990), 82 di 54; and 91 CLLC 16,005 (CLRB no. 821)).

[24] In *TELUS Communications Inc.*, *supra*, the Board, in a majority decision, included 2000 non-unionized Clearnet employees in a unit of 10,000 unionized TELUS employees following the sale of Clearnet to TELUS. The Board deemed that the expanded unit remained appropriate for collective bargaining and that the intended scope of the certification order had not been altered. In that case, the "simple majority" rule applied, in that the union merely had to demonstrate that it continued to have the support of the majority of the employees in the expanded bargaining unit (12,000 employees in total).

[25] However, it is a different matter when the proposed amendment of the certification order goes outside the intended scope of the original order. In *TELUS Communications Inc.*, *supra*, the Board stated the following in this respect:

[333] However, if the proposed amendment is outside of the intended scope of the original order, made evident by a resulting radical and substantial change of the certified bargaining unit, then the Board will require the following:

- a) the extended bargaining unit has to be appropriate;
- b) the members of the existing bargaining unit have to consent to the accretion;
- c) the union has to show majority support within the expanded unit **and the group that is being "swept in,"** the so-called "double majority rule."

(emphasis added)

[26] In the instant matter, based on the submissions of the parties, the Board finds that the union's application significantly alters the intended scope of the certification order held by the union. The certification order in question (no. 8665-U) states that **three** Transco facilities are included in the bargaining unit. The unit description reads as follows:

all drivers employed by Les Autobus Transco (1988) Inc., **excluding** office and garage employees,
located at: 101 Réverchon Street, Dorval; 7975 blvd Henri-Bourassa East, Montréal; 8201
Elmslie Street, LaSalle.

(emphasis added)

[27] The certification order was not intended to include all Transco drivers, but rather those employed at three specific facilities of the employer. Adding a new facility would consequently alter the intended scope of the order.

[28] Furthermore, the evidence shows that, in 2010, the Board issued a **separate** certification order (order no. 9749-U) to a CSN-affiliated union for Transco's new facility in Saint-Hubert. In the Board's view, and as the employer has submitted, given that the union was willing to recognize that the Saint-Hubert division comprised a separate division, it should *a fortiori* recognize that the new Anjou division created as a result of the employer's acquisition of TSL is also a separate division. Indeed, according to the submissions made by the employer, which have not been contradicted by the union, the operations of that division are engaged in autonomously and independently from those of the other divisions.

[29] Under the circumstances and in view of the foregoing, the Board cannot grant the union's application and declare that all drivers formerly employed by TSL are covered by certification order no. 8665-U, since the union's application significantly alters the intended scope of the certification order in question and there is no evidence of membership showing that the union has the support of not only the majority of the members of the expanded unit but also the group of drivers it wishes to include (double majority rule).

[30] The union's application is consequently dismissed.

[31] This is a unanimous decision of the Board.

Translation

Louise Fecteau
Vice-Chairperson

Daniel Charbonneau
Member

Robert Monette
Member